

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

HOPE HARPER,

Plaintiff,

vs.

Civ. No. 96-1048 BB/WWD

THE CITY OF ALBUQUERQUE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiff's Motion for Exclusion of Expert Testimony as a Discovery Sanction [docket no. 131] filed April 2, 1998. The matters giving rise to the motion have been addressed in my revised scheduling order entered March 23, 1998, except for the question of attorney fees in connection with the motion.

Plaintiff sought attorney fees in her Memorandum Brief in Support of Motion for Exclusion of Expert Testimony as a Discovery Sanction as well as in her reply. Even though the principal troubles which Plaintiff had with the defense experts have been addressed elsewhere, the chronology of events is such as to lead to the logical conclusion that the motion to exclude expert testimony triggered the City's activity which resulted in the entry of a revised scheduling order, thereby setting new dates for certain disclosures. It might have been gracious for Plaintiff to withdraw her motion to exclude expert witnesses; however, indifference or outright recalcitrance on the part of the City does not necessarily evoke a gracious response. I find that Plaintiff should be reimbursed in the amount of \$150.00 toward her attorney fees in this matter. This small

sanction hopefully will encourage the City to be more responsive to the requirements of the Federal Rules of Civil Procedure; particularly, Rule 26.

**WHEREFORE,**

**IT IS ORDERED** that on or before May 1, 1998, Defendant City of Albuquerque shall pay to Plaintiff the sum of \$150.00 for a portion of her attorney fees incurred in connection with her Motion for Exclusion of Expert Testimony as a Discovery Sanction.

**IT IS FURTHER ORDERED** that in all other respects, Plaintiff's Motion for Exclusion of Expert Testimony as a Discovery Sanction be, and it is hereby, **DENIED** for mootness.

  
UNITED STATES MAGISTRATE JUDGE